

ECtHR ON DECISION MAKING IN ENVIRONMENTAL MATTERS & GREEN PUBLIC ADMINISTRATION

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ECtHR'S "FAIR BALANCE" / PROPORTIONALITY REVIEW

Necessary in a democratic society_Balancing of competing interests of the individual and the community as a whole_Reasonable proportionality between the means and the aim

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SUBSTANTIVE REVIEW

merits of national authorities'
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Was the interference with a
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Did the national authorities
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DECISION MAKING PROCESS

Were the public authorities **diligent** and did they give **sufficient consideration** to all the competing interests?

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NATIONAL LEGAL FRAMEWORK

abstract assessment the law underlying the case

ECTHR takes a constitutional role & defines general principles detachable from a given individual case

PROCEDURAL REVIEW_National legal framework



Legal framework is required to govern the licensing, setting-up, operation, security and supervision of a dangerous/polluting activity and to make it compulsory for all those concerned to take practical measures to ensure the effective protection of the citizens whose lives might be endangered by the inherent risks. **VIOL Art 8**

Assessment of **quality of legislative process**: national legislator must **weigh the competing interests** & assess the proportionality of a given measure with a protected right; policy decisions must be **preceded by a substantive debate by parliamentarians** on the measure's justification in the light of modern-day conditions and of current human rights standards [**Hirst v. UK (2) [GC], 2005; Dudgeon v. UK, 1981**] Where it is scientifically proven that a person is unable to know that he/she is suffering from a disease, such a circumstance should be taken into account when calculating the expiry of limitation period. **VIOL Art 6**

Duarte and Others v. Portugal & 32 Member States ?; Verein KlimaSeniorinnen Schweiz v. Switzerland ?; Careme v. France ? Greenpeace Nordic v. Norway ? Allegedly insufficiently ambitious climate laws (mitigation targets); inadequate mitigation policies & measures

Jugheli and Others v. Georgia, 2017 Pollution from a large privatised thermal power plant in absence of any regulatory framework

Brincat and Others v. Malta, 2014 Inadequate regulation of activities engendering prolonged exposure to asbestos of workers.

Howald Moor and Others v. Switzerland, 2014 Fixed 10-year statutory limitation period for civil claims for disease calculated from asbestos exposure.



PROCEDURAL REVIEW_ Decision making process



Decision-making process leading to measures of interference must be **fair** and afford **due respect to the protected interests**. Where complex issues of environmental and economic policy are at stake, governmental decision-making must involve **timely and appropriate investigations and studies** so that the effects of activities that may damage the environment and infringe individuals' rights may be predicted and evaluated in advance and a fair balance may accordingly be struck between the various conflicting interests at stake. **Public must have access to the conclusions** of such studies and to **information** enabling members of the public to assess the danger to which they are exposed. Individuals concerned must also **be able to appeal to the courts** against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process. **VIOL Art 8 (procedural)**

Taşkın and Others v. Turkey, 2004 Continued operation of a gold mine contrary to national court's judgment & without new EIA

Giacomelli v. Italy, 2006 Storage and treatment of hazardous and non-hazardous waste producing harmful emissions of odours and waste

Tătar v. Romania, 2009 Chronic intoxication w/ cyanide & future health risks related to cyanide leaching of precious metals

Hardy and Maile v. the United Kingdom, 2012 construction and operation of LNG terminals in a harbour near a city



PROCEDURAL REVIEW_ Decision making process

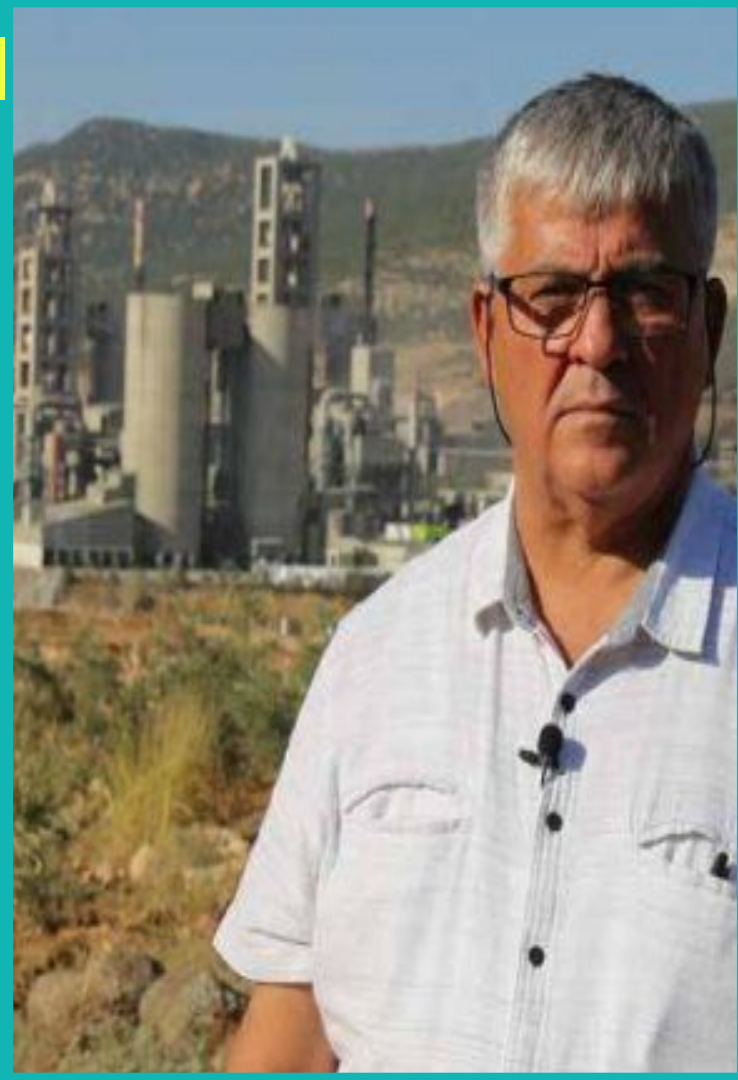


Information provided by the competent authorities must be reliable: **sincere, accurate and sufficient**. Interested parties must have a **remedy** allowing the content and quality of the information provided to be effectively controlled, within the framework of an adversarial procedure. **NO VIOL Art 10 (quality of information)**

Where technical information of which a domestic court has no specialist knowledge has dominant influence on the outcome of the dispute, **experts should inspire confidence**. They cannot have professional, **functional or hierarchical ties** to the defendant authorities or the intervening parties. They cannot be held to the same standards of utmost reserve and circumspection as judges (inappropriate language). There must be **sufficient procedural safeguards ensuring experts' neutrality** (e.g. procedure to disqualify biased experts; free evaluation of evidence; freedom to order another expert report of the court's own motion; expert opinion not binding on the court). **(NO) VIOL Art 6 (fair hearing)**

BureStop 55 and Others v. France, 2021 Environmental NGO denied legal standing to contest the accuracy of information on the management of radioactive waste communicated by a public agency

Çöçelli and Others v. Türkiye, 2022 Construction of cement factories. Neutrality of court experts assessing EIA



MERITS REVIEW_Sustainability



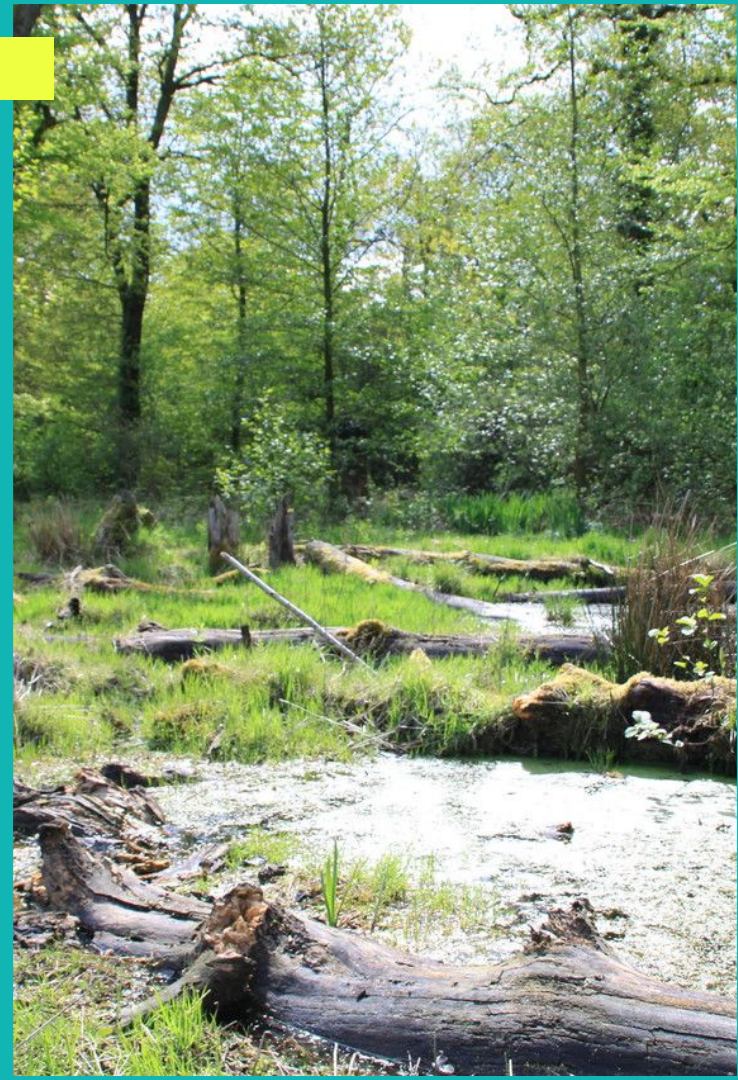
In today's society the protection of the environment is an increasingly important consideration; preserving unique ecosystems or natural resources is a legitimate aim for national authorities; margin of appreciation; commercial activity, subject to strict regulations; restrictions to be expected measures did not completely extinguish applicants' rights; company made large gains in the past; pecuniary losses sustained could be compensated. **MIF/NO VIOL Art 1/P1**

Fredin v. Sweden (no. 1), 1991 Revocation of a permit to exploit a gravel pit on private property for reasons of nature conservation and landscape restoration

Posti and Rahko v. Finland, 2002 Restrictions on commercial fishing rights regarding sea salmon and saltwater trout in certain public waters for the protection of finite fish stocks

Pindstrup Mosebrug A/S v. Denmark (dec.), 2008 Prohibition of peat extraction from public bogs despite long-term and irrevocable contracts, owing to the policy on the preservation of the remaining unspoiled raised bogs in Denmark considered geologically and biologically unique

O'Sullivan McCarthy Mussel Development Ltd v Ireland, 2018 Temporary ban on commercial mussel seed fishing in a SPA to bring Ireland in compliance with EU law & to protect migratory birds species



ECtHR Case-law Guide Environment

N. Kobylarz Balancing its way out of strong anthropocentrism: Integration of 'ecological minimum standards in the European Court of Human Rights' 'fair balance' review. (Elgar 2021)

N. Kobylarz Anchoring the right to a healthy environment in the European Convention on Human Rights: What concretized normative consequences can be anticipated for the Strasbourg Court in the field of admissibility criteria? (Springer 2023)

